

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

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In the Matter of )  
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Implementation of the )  
Subscriber Changes Provisions )  
of the Telecommunications Act )  
of 1996 )  
 )  
Policies and Rules Concerning )  
Unauthorized Changes of Consumers' )  
Long Distance Carriers )  
 )  
First Communications, LLC )  
Request for Waiver )

CC Docket No. 94-129**PETITION FOR WAIVER**

First Communications, LLC ("First Communications"), by their attorneys and pursuant to Section 1.3 of the Commission's Rules, 47 C.F.R. § 1.3, respectfully requests that the Commission grant a limited waiver of the authorization and verification requirements set forth in Sections 64.1100 through 64.1190 of the Commission's rules, and permit First Communications to be designated as the preferred long distance carrier for the customers of ITS Billing, Inc. ("ITS") without first obtaining each subscriber's individual authorization and verification.<sup>1</sup>

ITS, a Nevada corporation, is a switchless reseller providing interexchange services in eight states throughout the United States to both business and residential customers. First Communications, a limited liability company headquartered in Akron, Ohio, is a switchless

<sup>1</sup> Pursuant to 47 C.F.R. § 64.1150, prior to submitting a preferred carrier change, carriers must either: (1) obtain the subscriber's written and signed authorization; (2) obtain confirmation from the subscriber via a toll-free number provided for the exclusive (continued...)

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reseller providing interexchange and advanced data services, pre-paid calling cards, and wireless personal communications system services in various states throughout the United States. Since 1998, First Communications has been the underlying carrier for ITS' interexchange service.

In May 1999, ITS and First Communications entered into an asset purchase agreement whereby First Communications acquired certain assets of ITS, including ITS' customer base. Pursuant to this agreement, for a transition period of thirteen months, ITS would continue to perform billing and customer care functions for its customer base, and ITS customers would continue to be billed at the same rates, terms and conditions as in effect prior to the agreement. Moreover, ITS was to train and instruct First Communications' personnel in billing and customer care matters. At this time, customer invoices and payments are still sent through ITS.

First Communications now seeks a limited waiver of the Commission's rules, to permit First Communications to be designated the preferred long distance carrier for the customers of ITS, and as such, to assume the billing, customer care, and other functions associated with providing interexchange service. Customers will not experience any change in rates, calling plans or service quality as a result of the transfer to First Communications. In fact, the presubscribed customer's carrier identification code (CIC) will not change, as First Communications already was the underlying carrier serving the customers. Thus, the transition from ITS to First Communications will be transparent to the customers.

Customers will be notified of the change to First Communications. First Communications will make reasonable attempts to contact each affected customer individually

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(...continued)

purpose of confirming orders electronically; or (3) utilize an independent third party to verify the subscriber's order.

(either by telephone or in writing) to inform the customer of his or her rights and options, including the customer's right to select a carrier other than First Communications. In particular, First Communications will send a notification letter to each ITS customer (in substantially the form of *Attachment A* appended hereto). The letter will inform customers of the automatic switch in their telecommunications service provider from ITS to First Communications. The letter also will inform customers of the following: (1) that there will be no charge to the customer as a result of the change; (2) that there will be no change to the way customers make telephone calls; (3) that there will not be any change in the customer service available to them; (4) of the benefits of staying with First Communications; and (5) of the option to change to another service provider if they prefer. The notification letter also will invite customers to visit First Communications' website or dial a toll-free number for more information.

Petitioner respectfully submits that the purposes of the Commission's LOA and verification rules would not be served by obtaining prior authorization and verification to switch the affected customers of ITS to First Communications, and that the public interest is served by granting a waiver of those rules in these limited circumstances. Petitioner fears that such a "re-presubscription" effort would prove confusing and frustrating to customers. Moreover, such an effort could result in the temporary interruption of service to those former ITS customers who do not understand the need to sign new forms, and thus, fail to respond to requests for preferred carrier change in a timely manner. Those customers also might pay potentially higher casual calling rates after the discontinuance of presubscribed service. Accordingly, Petitioner believes that any potential benefits of obtaining new authorizations are outweighed by the potential detriments of such a program, and submits that all efforts will be taken to ensure that customers

are not inconvenienced or harmed in any way. Indeed, Petitioner's goal is to be able to provide superior service and rates to affected customers as a result of the migration.

It is well-established that waiver of the Commission's rules is appropriate if special circumstances warrant a deviation from the general rule, and such a deviation will serve the public interest.<sup>2</sup> The party requesting waiver must show that the underlying purpose of the rule would not be served or would be frustrated, or that unusual or unique circumstances cause application of the rule to be unfair, unduly burdensome or contrary to the public interest.

In the instant case, the special circumstances requiring a deviation from the Commission's rules include the need to ensure a seamless transition of long distance telecommunications service providers for the affected customers. Granting the waiver will protect against the possibility of customers losing long distance service altogether or being charged potentially higher casual calling rates. Moreover, the affected customers will be notified promptly of the change and their rights and options. By transferring customers by notification as described in this request, the policy goals of the Commission's authorization and verification requirements will be met more efficiently and consistent with the public interest. Indeed, the circumstances that justify grant of a waiver to Petitioners are analogous to those that the Commission recently has found to justify a waiver for many other carriers.<sup>3</sup>

Accordingly, Petitioner respectfully requests that the Commission waive its authorization and verification rules as set forth above. A limited waiver of the Commission's

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<sup>2</sup> See *WAIT Radio v. FCC*, 418 F.2d 1153, 1157-1159 (D.C. Cir. 1969), *cert. denied*, 409 U.S. 1027 (1972); *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990).

<sup>3</sup> See, e.g., *Sprint Communications Company, Request for Waiver*, DA 00-620 (rel. Mar. 17, 2000); *Iowa Telecommunications Services, Request for Waiver*, 14 FCC Rcd 21319 (1999); *Conversent Communications, LLC, Request for Waiver*, 14 FCC Rcd 21316 (continued...)

LOA and verification rules will allow a seamless transfer that will be transparent and advantageous to customers.

Respectfully submitted,

FIRST COMMUNICATIONS, LLC

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Counsel to First Communications, LLC

Dated: September 28, 2000

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(1999); *Excel Telecommunications, Inc., et al., Request for Waiver*, 14 FCC Rcd 16123  
(1999).

# **ATTACHMENT A**

IMPORTANT INFORMATION REGARDING YOUR TELECOMMUNICATIONS SERVICE.

Dear ITS Billing, Inc. Customer:

Welcome! We are happy to share some exciting news about your long distance telephone service. For the past two years, First communications LLC has provided underlying network transmission to ITS Billing Inc. and its customers. Now, certain of ITS Billing, Inc.'s long distance customers will be served directly by First Communications. You will continue to receive the excellent quality you're already receiving on your calls.

All of the great things that you have come to expect from ITS will remain the same. There is no change to your rates, service options, or the way that you dial. In addition, you still will have access to 24-hour-a-day customer care representatives. There will not be any charge or fee as a result of this change. The only change that you will notice will be the name of your carrier.

First Communications is an innovative company committed to providing you with excellent service, savings and choices you expect from a full service provider. If, within the first 90 days, you are not satisfied with First Communications' service, we will pay the fee to switch you to the long distance carrier of your choice. We are confident, however, that when you experience the low rates and quality service First Communications offers you will remain with First Communications.

Again, welcome to First Communications. If you have any questions, please call a customer care representative at **[INSERT 800 NUMBER]**.

Sincerely,

First Communications, LLC

## CERTIFICATE OF SERVICE

I hereby certify that on this 28th day of September, 2000, I served copies of First Communications, LLC Petition for Waiver, by hand and first class mail, U.S. postage prepaid, on the following:

Magalie Roman Salas  
Secretary  
Federal Communications Commission  
445 Twelfth Street, S.W.  
Washington, D.C. 20554

K. Michele Walters  
Associate Chief, Accounting  
Policy Division  
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Theresa A. Baum